

## **MINUTES OF THE CITY COUNCIL**

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, MAY 2, 2006**

The Council of the City of San José convened in regular session at 9:30 a.m. in the Mayor's Conference Room T1841, at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams.

Absent: Council Members - Yeager; Gonzales. (Excused)

Upon motion unanimously adopted, Council recessed at 9:33 a.m. to a Closed Session in Room T1841, (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation to consider the case of: (1) San José Mercury New, Inc. v. City of San José, et. al.; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (c) with respect to initiation of litigation in three (3) matters. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) San José Police Officers' Association; (2) International Association of Firefighters; (3) Operating Engineers, Local 3.

By unanimous consent, Council reconvened from the Closed Session and recessed at 9:10 a.m. and reconvened at 1:34 p.m. in the Council Chambers.

Present: Council Members - Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager.

Absent: Council Members - Gonzales. (Excused)

### **INVOCATION**

Katherine Nguyen, Grand Prize Winner of East Side Union High School District's "César Chávez Essay Contest". (District 5)

### **PLEDGE OF ALLEGIANCE**

Vice Mayor Chavez led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Council Member Pyle, seconded by Council Member Cortese and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Ceremonial Items 1.4 and 1.10 to be heard in the evening. (10-0-1. Absent: Gonzales.)

## **CEREMONIAL ITEMS**

### **1.1 Presentation of proclamation declaring May 2006 as “National Older Americans’/ Older San Joséans’ Month”. (LeZotte/Mayor)**

Action: Vice Mayor Chavez and Council Member LeZotte recognized May 2006 as “National Older Americans’/Older San Joséans’ Month”.

### **1.6 Presentation of a proclamation declaring May 2, 2006 as World Asthma Day in the City of San José. (LeZotte) (Rules Committee referral 4/26/06)**

Action: Vice Mayor Chavez and Council Member LeZotte recognized May 2, 2006 as “World Asthma Day” in the City of San José.

### **1.3 Presentation of a commendation to the Hanna Project for so generously volunteering their time, energy and resources to the African people of the Ivory Coast. (Yeager) (Rules Committee referral 4/19/06)**

Action: Vice Mayor Chavez and Council Member Yeager recognized and commended the Hanna Project for their contributions of time, energy and resources to the African people of the Ivory Coast.

### **1.5 Presentation of commendations to the Volunteer Center, related organizations, and volunteers in recognition of “Volunteer Month”. (Chavez) (Deferred from 4/25/06 – Item 1.12)**

Action: Vice Mayor Chavez commended the Volunteer Center, related organization and volunteers in recognition of “Volunteer Month”.

### **1.7 Presentation of a proclamation declaring May 2, 2006 as Tennis Day in the City of San José. (Williams) (Rules Committee referral 4/26/06)**

Action: Vice Mayor Chavez and Council Member Williams recognized May 2, 2006, as “Tennis Day” in the City of San José.

**1.9 Presentation of a commendation celebration Don Johnson's dedicated service to the community through providing outstanding junior tennis programs and teaching life skills to the youth of San José. (Chavez/Williams)  
(Rules Committee referral 4/26/06)**

Action: Vice Mayor Chavez and Council Member Williams recognized and commended Don Johnson for his dedicated service to the community of San José.

**CONSENT CALENDAR**

Upon motion by Council Member Williams, seconded by Council Member Campos, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Gonzales.)

**2.1 Approval of Minutes:**

- (a) **Regular Minutes of October 4, 2005**
- (b) **Regular Minutes of October 18, 2005**
- (c) **Regular Minutes of October 25, 2005**

Documents Filed: The regular minutes dated October 4, 2005, October 18, 2005 and October 25, 2005.

Action: The minutes were approved. (10-0-1. Absent: Gonzales.)

- 2.2**
- (a) **ORD. NO. 27696 – Rezoning certain real property situated on the west side of Ciro Avenue approximately 400 feet south of Forest Avenue to CO Commercial Office Zoning District. C05-121**
  - (b) **ORD. NO. 27697 – Rezoning certain real property situated on the northeast corner of North Capitol Avenue and Grandview Drive to A(PD) Planned Development Zoning District. PDC05-064**

Action: Deferred to May 23, 2006.

- (c) **ORD. NO. 27698 – Rezoning certain real property situated on the southwesterly corner of Nortech Parkway and Fortran Drive to IP Industrial Park Zoning District. C06-006**

Documents Filed: Proof of Publication of the title of Ordinance No. 27698 executed on April 25, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27698](#) was adopted. (10-0-1. Absent: Gonzales.)

- 2.2 (d) **ORD. NO. 27699 – Rezoning certain real property situated on the east end of Quinn Avenue, approximately 340 feet northerly of Tully Road to LI Light Industrial Zoning District. C06-008**

Documents Filed: Proof of Publication of the title of Ordinance No. 27698 executed on April 25, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27699](#) was adopted. (10-0-1. Absent: Gonzales.)

- (e) **ORD. NO. 27700 – Rezoning certain real property situated on the northwest corner of Hemlock Avenue and Clover Avenue to CN Commercial Neighborhood Zoning District. C06-017**

Documents Filed: Proof of Publication of the title of Ordinance No. 27698 executed on April 25, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27700](#) was adopted. (10-0-1. Absent: Gonzales.)

- (f) **ORD. NO. 27701 – Amending Section 20.40.100 of Chapter 20.40, Section 20.50.100 and 20.50.110 of Chapter 20.50, and Section 20.70.100 of Chapter 20.70, all of Title 20 of the San José Municipal Code, to set forth regulations pertaining to office uses in Commercial, Industrial and Downtown Zoning Districts, amending Chapter 20.175 of Title 20 of the San José Municipal Code to add new sections pertaining to non-residential condominium sizes, amending Chapter 20.200 of Title 20 of the San José Municipal Code to add definitions of various office uses and making other related clarifying changes.**

Documents Filed: Proof of Publication of the title of Ordinance No. 27698 executed on April 25, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27701](#) was adopted. (10-0-1. Absent: Gonzales.)

- (g) **ORD. NO. 27702 – Rezoning certain real property situated on the southeast corner of Hostetter Road and Sierra Creek Way to A(PD) Planned Development Zoning District. PDC05-086**

Documents Filed: Proof of Publication of the title of Ordinance No. 27698 executed on April 25, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27702](#) was adopted. (10-0-1. Absent: Gonzales.)

- (h) **ORD. NO. 27703 – Rezoning certain real property situated 900 feet northerly of Story Road and approximately 2,300 feet westerly of McLaughlin Avenue to A(PD) Planned Development Zoning District. PDC00-030**

Action: Dropped.

- 2.3 Approval of a first amendment to the Small Concession Agreement with Federal Express Corporation to extend the term of the agreement for five years from July 1, 2006 to June 30, 2011, with total revenue to the City of \$6,000 over five years for the extended term of the agreement. CEQA: Resolution Nos. 67380 and 71451, PP 06-035. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated April 12, 2006, recommending approval of the first amendment.

Action: The first amendment to the agreement was approved. (10-0-1. Absent: Gonzales.)

- 2.4 Approval of a continuation agreement and a second amendment to the Commercial Air Cargo Operating Agreement and Permit with ABX Air, Inc. to extend the term of the agreement from March 31, 2006 through November 30, 2007, with continuing estimated annual revenue to the City of \$163,000. CEQA: Resolution Nos. 67380 and 71451, PP 06-014. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated April 12, 2006, recommending approval of a second amendment and continuation agreement.

Action: The second amendment and continuation agreement was approved. (10-0-1. Absent: Gonzales.)

- 2.5 (a) Adoption of the following 2005-2006 Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund):**
- (1) Establish an appropriation to the Department of Parks, Recreation, and Neighborhood Services for the Coyote Creek Trail Project (PSM #444) in the amount of \$546,500.**
  - (2) Establish an appropriation to the Department of Public Works for the Holly Hill Infrastructure Improvements Project (PSM #445) in the amount of \$150,000.**
  - (3) Increase the estimate for Earned Revenue by \$696,500.**
- (b) Adoption of resolutions making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with:**
- (1) The Coyote Creek Trail Project as more specifically described in the memorandum from the Redevelopment Agency, dated March 14, 2006.**
  - (2) The Holly Hill Infrastructure Improvements Project as more specifically described in the memorandum from the Redevelopment Agency, dated March 15, 2006.**

**CEQA: Coyote Creek Trail Project: Not a Project. Holly Hill Infrastructure Improvements Project: Exempt, PP05-228. Council District 3 and 7. SNI Area: Tully/Senter, University, 13<sup>th</sup> Street, Five Wounds/Brookwood Terrace, and Spartan/ Keyes. (City Manager's Office)**

## 2.5 (Cont'd.)

Documents Filed: (1) Memorandum from Budget Director Larry Lisenbee, dated April 12, 2006, recommending adoption of an appropriation ordinance and funding sources resolution amendment and resolutions. (2) Supplemental memorandum from Budget Director Larry Lisenbee, dated May 1, 2006, transmitting additional information.

Action: [Ordinance No. 27704](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Coyote Creek Trail and the Holly Hill Infrastructure Improvements Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; [Resolution No. 73141](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72762 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2005-2006 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund"; [Resolution No. 73142](#), entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the University, Thirteenth Street, Five Wounds/Brookwood Terrace, and Sparken/Keyes Neighborhoods in the Strong Neighborhoods Initiative Redevelopment Project Area" and [Resolution No. 73143](#), entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Tully/Senter Neighborhood in the Strong Neighborhoods Initiative Redevelopment Project Area", were adopted. (10-0-1. Absent: Gonzales.)

## 2.6 **Approval of San José Arena Authority recommendation to provide funding from the City and Community Event Fund and use of the HP Pavilion at San José for three Community Event dates as follows:**

- (a) **Funding in the amount of \$16,000 to San José Unified School District for commencement exercises for Hoover, Castillero and Willow Glen middle schools on June 13, 2006; and**
- (b) **Funding in the amount of \$16,000 to Berryessa Union School District for commencement exercises for Morill, Sierramont and Piedmont Middle Schools on June 15, 2006; and**
- (c) **Funding in the amount of \$16,000 to the Viet ET Foundation for the Eleventh Annual Summer Concert on June 24, 2006.**

**CEQA: Resolution No. 60199. (City Manager's Office)**

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated April 10, 2006, recommending use of the HP Pavilion for three community events.

Public Comment: George Fokos spoke in favor of the staff recommendation.

Action: Upon motion by Council Member Yeager, seconded by Council Member Reed and carried unanimously, the community event funding was approved. (10-0-1. Absent: Gonzales.)

- 2.7 Report on bids and award of contract for the construction project entitled “San José/Santa Clara Water Pollution Control Plant (Plant), FY 2005-2006 Capital Improvement Program, DAF Pressure Retention Tanks and Valves Replacement – Phase 1,” to the low bidder, D.W. Nicholson Corp. Inc., in the amount of \$458,000; and approval of a budget contingency in the amount of \$50,000. CEQA: Exempt, PP05-124. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated April 12, 2006, recommending award of the contract. (2) Letter from the Treatment Plant Advisory Committee, dated April 11, 2006, stating concurrence with the Staff recommendation.

Action: The contract was approved. (10-0-1. Absent: Gonzales.)

- 2.8 Approval of a sole source procurement and authorize the Director of Finance to execute a purchase order for a BearCat multi-wheeled, all terrain armored vehicle, manufactured by Lenco Armored Vehicles in Pittsfield, Massachusetts, and a five-year extended warranty for a total cost not to exceed \$254,000 including tax. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated April 26, 2006, recommending approval of a sole source procurement and purchase order.

Action: The sole source procurement and purchase order was approved. (10-0-1. Absent: Gonzales.)

- 2.9 Approval of an amendment to an agreement with the County of Santa Clara regarding the provision of the Criminal Justice Information Control System to add network charges to the scope of services, increasing compensation by \$45,000 from \$85,000 to a not to exceed amount of \$130,000 with no changes to the contract term. CEQA: Not a Project. (Police)**

Documents Filed: Memorandum from Police Chief Robert Davis, dated April 17, 2006, recommending approval to amend the agreement.

Action: The amended agreement was approved. (10-0-1. Absent: Gonzales.)

- 2.10 Approval of a Master Agreement with HMM Engineers for consultant land surveying services for various projects in an amount not to exceed \$500,000 for a term from the date of execution to December 31, 2007. CEQA: Not a Project. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated April 12, 2006, recommending approval of a master agreement.

Action: The master agreement was approved. (10-0-1. Absent: Gonzales.)

- 2.11 (a) Adoption of a resolution authorizing the City Manager to negotiate and execute a second amendment to the Cooperative Agreement with the Santa Clara Valley Water District for the replacement of the existing bridge across Guadalupe River at Willow Glen Way to increase the amount of the City of San Jose's cost share from \$434,700 to \$505,000.
- (b) Adoption of the following Appropriation Ordinance amendments in the Building and Structure Construction Tax Fund:
- (1) Increase the Willow Glen Way: Guadalupe River Bridge appropriation by \$216,000.
- (2) Decrease the Ending Fund Balance by \$216,000.

**CEQA: Negative Declaration, PP98-01-012. Council District 6. (Transportation/City Manager's Office)**

Documents Filed: Memorandum from Director of Transportation James Helmer and Budget Director Larry Lisenbee, dated April 13, 2006, recommending approval of a second amendment and adoption of an appropriation ordinance.

Public Comment: George Fokos spoke in favor of the staff recommendation.

Action: Upon motion by Council Member Yeager, seconded by Council Member Reed and carried unanimously, [Resolution No. 73144](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Second Amendment to the Cooperative Agreement with the Santa Clara Valley Water District for the Replacement of the Bridge Across Guadalupe River at Willow Glen Way, in an Additional Amount Not to Exceed \$70,300 for a Total Amount Not to Exceed \$505,000" and [Ordinance No. 27705](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Building and Structure Construction Tax Fund for the Willow Glen Way Guadalupe River Bridge; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (10-0-1. Absent: Gonzales.)

## **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

#### **3.2 Report of the Rules Committee – April 19, 2006 Vice Mayor Chavez, Chair**

Documents Filed: The Rules Committee Report dated April 19, 2006.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
- (1) Review May 2, 2006 Draft City Council Agenda

The Committee approved the May 2, 2006 Draft City Council Agenda with two additions.



### **3.2 Report of the Rules Committee – April 19, 2006 Vice Mayor Chavez, Chair**

- (b) City Council (Cont'd.)
  - (2) Add New Items to April 25, 2006 City Council Agenda
    - (a) Mayor and Council Member Requests

The Committee approved the April 25, 2006 City Council Agenda with five additions.

- (1) Public Records Request – Grand Prix (Chavez)  
Heard by the Council on 4/25/06.

- (3) List of Reports Outstanding

The Committee accepted the report with two reports outstanding.

- (c) Legislative Update
  - (1) State - There were none.
  - (2) Federal

Director Intergovernmental Relations Betsy Shotwell provided a verbal update on a comprehensive immigration reform measure (HR4437) currently stalled in the Senate.

- (d) Meeting Schedules
  - (1) Approve Downtown Retail Strategy Study Session for May 30, 2006, 9:00 a.m. – 12:00 p.m. Attachment: Memorandum from Redevelopment Agency Director Harry S. Mavrogenes, dated April 7, 2006, recommending approval of a study session.

The Committee approved the Study Session.

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated April 13, 2006, transmitting items for Public Record and Administration for the period of April 5-11, 2006.

The Committee noted and filed the Public Record.

- (f) Appointments to Boards, Commissions and Committees

There were none.

- (g) Rules Committee Reviews, Recommendations and Approvals

There were none.

### **3.2 Report of the Rules Committee – April 19, 2006 Vice Mayor Chavez, Chair**

#### **(h) Open Forum**

Bill Chew spoke broadly about his qualifications to run for Council District 3.

#### **(i) Adjournment - The meeting was adjourned at 2:25 p.m.**

Action: Upon motion by Council Member Campos, seconded by Council Member Williams and carried unanimously, the Rules Committee Report and the actions of April 19, 2006, were accepted. (10-0-1. Absent: Gonzales.)

### **3.3 Report of the Making Government Work Better Committee – April 20, 2006 Council Member Reed, Chair**

Documents Filed: The Making Government Work Better Committee Report dated April 20, 2006.

#### **(a) City Clerk Technology and Automation Progress Report. Attachment: Memorandum from City Clerk Lee Price, dated April 13, 2006, recommending acceptance of the report.**

City Clerk Lee Price presented the report. Chair Reed recommended scanning and publishing the current Council Policies and notate on those policies needing updates. Chair Reed also recommended that Staff revise policies and practices requiring revisions. The Committee accepted the report, including Chair Reed's recommendations.

#### **(b) Major IT Projects**

##### **(1) Critical Needs. Attachment: Memoranda from Interim Chief Information Officer Randall Murphy, both dated April 10, 2006, recommending acceptance of the reports.**

Chair Reed recommended upgrading the Police Department's major Information Technology (IT) projects and considering those projects as high priorities. The Committee accepted the Major IT Projects Critical Needs Report to include Chair Reed's recommendation.

##### **(2) Status Report**

Member LeZotte referenced the Geographic Information System Integration Plan (GIS) and recommended that a presentation be made in a Council Study Session on Coyote Valley as built according to plan. The Committee accepted the Major IT Projects Status Report to include Member LeZotte's recommendation.

### **3.3 Report of the Making Government Work Better Committee – April 20, 2006 Council Member Reed, Chair**

#### **(c) Oral Petitions**

Bill Chew spoke in support of open and transparent government and also acknowledged his candidacy.

#### **(d) Adjournment - The meeting was adjourned at 2:46 p.m.**

Action: Upon motion by Council Member Reed, seconded by Council Member Cortese and carried unanimously, the Making Government Work Better Committee Report and the actions of April 20, 2006, were accepted. (10-0-1. Absent: Gonzales.)

- ### **3.4**
- (a) Acceptance of the report on policy options for AT&T's Project Lightspeed, to be used for the May 11, 2006 Council Study Session, which was set by the Rules Committee on April 26, 2006.**
  - (b) Adoption of a resolution opposing AB2987 (Nunez, Levine), The Digital Infrastructure and Video Competition Act of 2006.**
- CEQA: Not a Project. (City Manger's Office/Public Works)**

Documents Filed: (1) Memorandum from Deputy City Manager Ed Shikada and Director of Public Works Katy Allen, dated April 19, 2006, recommending acceptance of the report and approval of a study session. (2) Supplemental memorandum from Deputy City Manager Ed Shikada and Director Intergovernmental Relations Betsy Shotwell, dated April 28, 2006, transmitting additional information.

Deputy City Manager Ed Shikada presented a brief outline of AT&T's Project Lightspeed. Director Intergovernmental Relations Betsy Shotwell provided a brief update on AB2987.

Deputy City Manager Shikada and Director Shotwell responded to Council questions and comments.

Public Comment: Speaking in favor of moving forward with Project Lightspeed were AT&T Representatives Leon Beauchman and John di Bere. Speaking in opposition were William Garbett and R.J. Castro.

Action: Upon motion by Council Member Cortese, seconded by Council Member Chirco and carried unanimously, the report was accepted, and [Resolution No. 73145](#), entitled: "A Resolution of the Council of the City of San José Opposing California Assembly Bill 2987 (Nunez, Levine) The Digital Infrastructure and Video Competition Act of 2006", was adopted, including: (1) Staff directed to ensure that there is an opportunity for other business partners to be able to participate in the May 11, 2006 Study Session. (2) Staff to bring back a position on the Federal Legislation on the May 9, 2006 City Council Meeting. (10-0-1. Absent: Gonzales.)

- 3.5**
- (a) Adoption of a resolution authorizing the Director of Finance to execute a consulting service agreement with CedarCrestone for the upgrade of the Human Resources/Payroll System from May 3, 2006 to March 31, 2007, in an amount not to exceed \$1,199,091 and to execute change orders in a contingency (10%) amount of \$119,909.**
  - (b) Adopt the following Appropriation Ordinance amendments in the General Fund:**
    - (1) Increase the Payroll/Human Resources Appropriation by \$135,000.**
    - (2) Decrease the Contingency Reserve \$135,000.**
  - (c) Adopt the following Appropriation Ordinance amendments in the Unemployment Insurance Fund:**
    - (1) Establish a Benefits Functionality in Payroll/HR System appropriation to the Employee Services Department in the amount of \$30,855.**
    - (2) Decrease the Unrestricted Ending Fund Balance by \$30,855.**
- CEQA: Not a Project. (Employee Services/City Manager's Office)**

Documents Filed: Memorandum from Director Employee Services Mark Danaj and Budget Director Larry Lisenbee, dated April 12, 2006, recommending adoption of a resolution, and appropriation ordinance amendments.

Action: Upon motion by Council Member Cortese, seconded by Council Member Campos and carried unanimously, [Resolution No. 73146](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute a Consultant Agreement with Cedarcrestone, Inc. for the Upgrade of the Human Resource/Payroll System"; [Ordinance No. 27706](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the General Fund for the Human Resources Payroll System; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Ordinance No. 27707](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Unemployment Insurance Fund for the Benefits Functionality in Payroll/Human Resources System; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (10-0-1. Absent: Gonzales.)

- 3.6**
- (a) Approval of the following changes to the existing City Ordinances regarding the City's utility services.**
    - (1) Approval of an Ordinance amending Section 9.10.1210 of Chapter 9.10 of Title 9 of the San José Municipal Code to authorize the Director of Finance to cancel late charges, up to any amount on residential Recycle Plus bills where the late charge was erroneously added to a bill for single or multi-family; and to authorize the Director of Finance to cancel late charge up to an amount not to exceed \$500 per customer during any 24-month period in which the customer has not previously incurred a late charge.**

*(Item continued on the next page)*

- 3.6 (a) (2) **Approval of an Ordinance amending Part 15.08 of Title 15 of the San José Municipal Code to add a new Section 15.08.330 “Payment for Service” to require timely payment of Municipal Water bills; to authorize the Director of Finance to cancel late charges, up to any amount, where the customer can demonstrate that he or she did not receive a bill, or the bill is erroneous, provided the cancellation request is made within ninety (90) days of receiving notice of the late charge; and to authorize the Director of Finance to cancel late charges on Municipal Water bills, up to an amount not to exceed \$500 per customer during any 24-month period in which the customer has not previously incurred a late charge.**
- (b) **Approval of due dates for the combined Municipal Water/Recycle Plus bills to be issued by the Consolidated Utility Billing System (C-UBS):**
- (1) **25 days from the billing date for all residential bills;**
- (2) **45 days from the billing date for all non-residential bills.**
- (c) **Approval of publication and mailing of notices related to the proposal to change the late charge amount for Municipal Water to \$5.00 or 5% of the bill, whichever is greater.**
- (d) **Direct that no late fees be assessed on the first C-UBS billing cycle until the second C-UBS billing cycle.**

**CEQA: Not a Project. (Finance)**

Documents Filed: Replacement memorandum from Director of Finance Scott Johnson, dated April 21, 2006, recommending approval of the ordinances and approval of the due dates.

Public Comment: William Garbett spoke in opposition to the Staff recommendation.

Action: Upon motion by Council Member Pyle., seconded by Council Member Williams and carried unanimously, [Ordinance No. 27708](#), entitled: “An Ordinance of the City of San José Amending Section 9.10.1210 of Chapter 9.10 of Title 9 of the San José Municipal Code to Revise the Provisions Relating to Late Charges for Delinquent Bills for Residential Solid Waste Collection Services” and [Ordinance No. 27709](#), entitled: “An Ordinance of the City of San José Amending Chapter 15.08 of Title 15 of the San José Municipal Code to Add a New Section 15.08.330 to Require Timely Payment of Bills for Municipal Water Service; To Authorize the Director of Finance to Cancel Late Charges on Delinquent Municipal Water Bills, Up to Any Amount, Where the Customer Can Demonstrate that He or She Did Not Receive a Bill, or the Bill is Erroneous, Provided the Cancellation Request is Made Within Ninety (90) Days of Receiving Notice of the Late Charge; and To Authorize the Director of Finance to Cancel Late Charges Imposed on Municipal Water Bills Under Specified Circumstances”, were passed for publication, and the due dates, publication and mailing notices and no late fees on the C-UBS billing cycle were approved. (10-0-1. Absent: Gonzales.)

- 3.7 (a) **Review and acceptance of the Annual Report for 2005 regarding in lieu fees collected by the City from developers in lieu of construction of public improvements.**
- (b) **Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:**
- (1) **Increase the Public Works Personal Services Appropriation by \$200,000.**
- (2) **Increase the estimate for transfers and reimbursements by \$200,000.**
- CEQA: Not a Project. (Public Works/City Manager's Office)**

Documents Filed: Memorandum from Director of Public Works Katy Allen and Budget Director Larry Lisenbee, dated April 12, 2006, recommending approval of the report, and adoption of appropriation ordinance and funding sources resolution amendments.

Action: Upon motion by Council Member Williams, seconded by Council Member Campos and carried unanimously, the report was accepted and [Ordinance No. 27710](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the General Fund for the Public Works Personal Services Appropriation; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 73147](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72762 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2005-2006 to Adjust Revenues in the General Fund", were adopted. (10-0-1. Absent: Gonzales.)

- 3.8 (a) **Approval of the report on the proposed fiscal year 2005/06-2010/11 Workplan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program, and the proposed Rule 20B (In-Lieu Fee) Undergrounding Master Plan.**
- (b) **Direction to staff to bring a report on the progress of project delivery with PG&E to the Building Better Transportation Committee in Fall 2006.**
- CEQA: Not a Project. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated April 12, 2006, recommending approval of the report.

Action: Upon motion by Council Member Campos, seconded by Council Member Chirco and carried unanimously, the report was approved. (10-0-1. Absent: Gonzales.)

- 3.9 **Public Hearing and adoption of a resolution vacating a portion of North Twentieth Street north of Santa Clara Street. CEQA: Mitigated Negative Declaration (PP03-397). Council District 3. SNI Area: Five Wounds/Brookwood Terrace. (Public Works)**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated April 12, 2006, recommending conducting a public hearing and adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on April 19, 2006, and April 26, 2006, submitted by the City Clerk.

### 3.9 (Cont'd.)

Public Comment: Vice Mayor Chavez opened the public hearing. There was no testimony from the floor. Vice Mayor Chavez closed the public hearing.

Action: Upon motion by Council Member Campos, seconded by Council Member Williams and carried unanimously, [Resolution No. 73148](#), entitled: "A Resolution of the Council of the City of San José To Conditionally Vacate a Portion of North Twentieth Street", was adopted. (10-0-1. Absent: Gonzales.)

### 3.10 **Approval of an ordinance amending Chapter 3.36 of Title 3 of the San José Municipal Code to change the definition of surviving child/children to include children born to retirees or adopted by retirees after retirement; to be effective April 15, 2006. CEQA: Not a Project. (Retirement Board)**

Documents Filed: Memorandum from Federated City Employees' Retirement System Secretary Edward Overton, dated April 12, 2006, recommending approval of an ordinance.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, [Ordinance No. 27711](#), entitled: "An Ordinance of the City of San José Amending Sections 3.36.1200, 3.36.1210, 3.36.1230 and 3.36.1240 of Chapter 3.36 of Title 3 of the San José Municipal Code to Revise the Definition of Surviving Child in the Police and Fire Department Retirement Plan Effective April 15, 2006 to Delete the Requirement a Child be Conceived or Adopted Prior to Retirement", was passed for publication. (10-0-1. Absent: Gonzales.)

### 3.11 (a) **Approval of an ordinance amending Chapter 3.36 of Title 3 of the San José Municipal Code (Police and Fire Department Retirement Plan) to implement state law regarding benefits for registered domestic partners, and amending Section 3.44.010 of Chapter 3.44 of Title 3 of the San José Municipal Code to implement cost-of-living adjustments for surviving registered domestic partners; and** (b) **Adoption of a resolution amending the Police and Fire Supplemental Retiree Benefit Reserve resolution to include surviving registered domestic partners on the same basis as surviving spouses.** **CEQA: Not a Project. (Retirement Board)**

Documents Filed: Memorandum from Federated City Employees' Retirement System Secretary Edward Overton, dated April 12, 2006, recommending approval of an ordinance and adoption of a resolution n.

Public Comment: George Fokos spoke in favor of the staff recommendation.

### **3.11 (Cont'd.)**

Action: Upon motion by Council Member Yeager, seconded by Council Member Pyle and carried unanimously, [Ordinance No. 27712](#), entitled: "An Ordinance of the City of San José Amending Chapter 3.36 and Chapter 3.44 of Title 3 of the San José Municipal Code to Implement State Law Regarding Benefits for Registered Domestic Partners", was passed for publication and [Resolution No. 73149](#), entitled: "A Resolution of the Council of the City of San José Amending the Methodology for the Distribution of Monies in the Supplemental Retiree Benefit Reserve of the Police and Fire Department Retirement Fund to Include Surviving Registered Domestic Partners", was adopted. (10-0-1. Absent: Gonzales.)

## **COMMUNITY & ECONOMIC DEVELOPMENT**

### **4.1 Report of the Building Strong Neighborhoods Committee – April 17, 2006 Council Member Chirco, Chair**

Documents Filed: The Building Strong Neighborhoods Committee Report dated April 17, 2006.

- (a) Discussion and Update on Neighborhood Development Center and Citywide Neighborhood Association Infrastructure. Attachment: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated April 6, 2006, recommending acceptance of the report.

The Committee accepted the Staff Report.

- (b) Citywide Trail Update Attachment: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated April 17, 2006, recommending acceptance of the report.

The Committee accepted the Staff Report.

- (c) Strong Neighborhood's Initiative Report on New SNI Areas and Action Agenda. Attachment: Memorandum from Assistant City Manager Mark Linder, dated April 17, 2006, recommending acceptance of the report.

The Committee accepted the Staff Report. See Item 4.3 for Council Action taken.

- (d) Oral Petitions

Bill Chew mentioned his web site, the fact that he is running for Council District 3, and that the Neighborhood Development Center should be moved to City Hall.

- (e) Adjournment - The meeting was adjourned at 2:25 p.m.



#### **4.1 (Cont'd.)**

##### **Report of the Building Strong Neighborhoods Committee – April 17, 2006 (Cont'd.) Council Member Chirco, Chair**

Action: Upon motion by Council Member Chirco, seconded by Council Member Williams and carried unanimously, the Building Strong Neighborhoods Committee Report and the actions of April 17, 2006, were accepted. (10-0-1. Absent: Gonzales.)

#### **4.3 Approval of actions related to the SNI – renewing the action agenda framework. (City Manager's Office)**

**[Building Strong Neighborhoods Committee 4/17/06 – Item 4.1(c)]**

Action: Deferred to June 6, 2006.

- 4.4 (a) Adoption of a resolution authorizing the City Manager to negotiate with Cargill Value Investments for the sale of the existing Development Enhancement Special Fund (DESF) loan portfolio to assist in the capitalization of the Economic Development Catalyst Program (EDCP), and if negotiations with Cargill Value Investments are unsuccessful, authorization to negotiate with additional companies in order to obtain the best value for the City.**
- (b) Adoption of a resolution authorizing the City Manager to negotiate a contract with Pacific Community Ventures as the Fund Manager for an Economic Development Catalyst Program (EDCP) for Fund Management Services.**

**CEQA: Not a Project. (City Manager's Office)**

Documents Filed: Memoranda from Director of Economic Development Paul Krutko, both dated April 12, 2006, recommending adoption of resolutions.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, [Resolution No. 73150](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Cargill Value Investments for the Sale of the DESF Loan Portfolio" and [Resolution No. 73151](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Pacific Community Ventures for Fund Management Services for an Economic Catalyst Program", were adopted. (10-0-1. Absent: Gonzales.)

## NEIGHBORHOOD SERVICES

### 5.2 Adoption of the following appropriation ordinance amendments in the Park Trust Fund (Fund 375):

- (a) Presentation of information related to and acceptance of the report on the Park Trust Fund.
  - (b) Establish a PDO/PIO Fee Refund appropriation to the Department of Parks, Recreation and Neighborhood Services in the amount of \$415,000 for the refund of uncommitted PDO/PIO fees and interest to known property owners.
  - (c) Establish a Park Trust Fund Administration appropriation to the Department of Parks, Recreation and Neighborhood Services in the amount of \$40,000 to support the hiring of a temporary Analyst in PRNS for the remainder of the fiscal year to continue timely administration of the fund (\$20,000) and a review of the draft administrative policies and procedures for the administration of the Park Trust Fund by the City's external auditor Macias, Gini & Co. LLP (\$20,000).
  - (d) Decrease the appropriation for the Future PDO/PIO Reserve by \$455,000.
- CEQA: Not a Project. (Parks, Recreation and Neighborhood Services/Finance/City Manager's Office)**  
**(Deferred from 3/21/06 – Item 5.2 and 4/18/06 – Item 5.2)**

Action: Item 5.2 was deferred to no specific date.

### 5.3 Acceptance of the Community Services Gap Analysis Report. CEQA: Not a Project. (City Manager's Office)

Documents Filed: (1) Memorandum from Mayor Gonzales, dated April 28, 2006, recommending acceptance of the report. (2) The City of San José Community Services Gap Analysis Report dated April 2006.

Assistant City Manager Mark Linder presented an overview of the Community Services Gap Analysis Report and responded to Council questions.

Public Comment: George Fokos spoke in support of the recommendation.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, the report was accepted, with the following additional direction: (1) Direct the City Manager to return with a workload assessment on all the items that Staff recommends under "Issues Requiring Significant Additional Time and Resources. (2) Direct the City Manager to explore alternative strategies for delivery of services that enable community based organizations to address needs at appropriate levels at such time when the City completes a more thorough gap analysis that identifies specific needs and if the Council considers filling those gaps in service. (3) Direct the

### 5.3 (Cont'd.)

City Manager to return with his recommendations on how often needs assessments should be conducted in the future. (4) Clarify the purpose and the objectives of the Gap Analysis and how this will impact the City's current grant management program. (10-0-1. Absent: Gonzales.)

### 5.4 **Adoption of a resolution authorizing the City Manager to negotiate an agreement with the Boys and Girls Club Silicon Valley to purchase an interest in the Boys and Girls Club's property located at 2293 Cunningham Avenue and direction to return to Council with appropriation actions. (City Manager's Office/Parks, Recreation and Neighborhood Services)**

Action: Deferred to May 9, 2006.

## **TRANSPORTATION & AVIATION SERVICES**

- 6.2 (a) **Approval of a new Fuel Farm Ground Lease and Operating Agreement with SJC Fuel Company, LLC for the development of a jet fuel storage facility for a term of 30 years, with an approximate annual rent to the City in the first year of approximately \$368,134.**
- (b) **Adoption of a resolution authorizing the Director of Aviation to negotiate and execute any amendments to the Fuel Farm Ground Lease and Operating Agreement with SJC Fuel Company, LLC to reduce the size of the leasehold premises at no change in the rent per square foot, as necessary to reflect changes in the plans and specifications for the fuel storage facility.**
- CEQA: Resolution Nos. 67380 and 71451, PP 06-029. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated April 12, 2006, recommending approval of the agreement and adoption of a resolution.

Action: Upon motion by Council Member Cortese, seconded by Council Member Pyle and carried unanimously, the operating agreement was approved, and [Resolution No. 73152](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Aviation to Negotiate and Execute any Documents to the Fuel Farm Ground Lease and Operating Agreement with SJC Fuel Company, LLC to Reduce the Size of the Leasehold Premises at No Change in the Rent Per Square Foot", was adopted. (10-0-1. Absent: Gonzales.)

## NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9719	Mission Springs Ct. at Murphy Avenue	4	Silicon Valley Habitat for Humanity	6 Units	SFD	Approve
9760	West side of Meridian Avenue, 600' North of Foxworthy Avenue	9	Toll California IX	204 Units	SFA/MFA	Approve

## NOTICE OF CITY ENGINEER'S AWARD OF CONSTRUCTION PROJECTS

On October 25, 2005, City Council approved a one year pilot program that delegated authority to the Director of Public Works to award or reject bids on construction projects where the base contract amount is below \$1,000,000. In accordance with this policy, the following is a list of projects that were awarded or rejected by the Director of Public Works in April 2006

### AWARD:

<u>Project Name</u>	<u>Council District</u>	<u>Contractor</u>	<u>Contract Award Amount</u>	<u>Award Date</u>
New Jersey Ave. Storm Drain Improvement	6	Stoloski/Gonzales, Inc.	\$940,490	4/17/06
Rosemary Area Sanitary Sewer Rehabilitation	3	D'Arcy and Harty Construction, Inc.	\$890,320	3/14/06

### REJECTION

<u>Project Name</u>	<u>Council District</u>	<u>Engineer's Estimate</u>
Traffic Signal Modification at Almaden Boulevard and San Fernando Street Project	3	\$115,000

## **OPEN FORUM**

- (1) Robert Apgar voiced his personal view points.
- (2) Mark Trout voiced his own religious opinions.
- (3) George Fokas voiced his opinion on the May 1, 2006 Immigrant March.
- (4) Bill Chew reiterated his candidacy for Council Member of District 3.
- (5) RJ Castro announced the May 6, 2006 Annual Arthritis Fund Raiser Event.
- (6) Ross Signorino voiced his thoughts regarding the May 1, 2006 Immigrant March.

## **ADJOURNMENT**

The Council of the City of San José adjourned the afternoon session at 3:51 p.m.

## RECESS/RECONVENE

The City Council recessed at 3:51 p.m. from the afternoon City Council session and reconvened at 7:01 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager.

Absent: Council Members - Gonzales. (Excused)

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Vice Mayor Cortese, seconded by Council Member Williams, and carried unanimously, the below noted continuances and actions were taken as indicated. (10-0-1. Absent: Gonzales.)

## CEREMONIAL ITEMS

- 1.12 Presentation of a commendation to the East San José-Evergreen Lady Jordans Girls basketball team, who placed 2nd nationally in the "All Net" Tournament in March of 2006. (Campos)**  
**(Rules Committee referral 4/26/06)**

Action: Vice Mayor Chavez and Council Member Campos recognized and commended the East San José-Evergreen Lady Jordans Girls Basketball Team, who placed 2nd nationally in the "All Net" Tournament in March of 2006.

- 1.4 Presentation of commendations to Community Arts and History Support, Northeast Region APPN, and the Milpitas Vietnamese Lions Club for their Principle of Life Essay Celebration and recognition of the Principle of Life Essay Winners. (Cortese)**  
**(Deferred from 4/25/06 – Item 1.10)**

Action: Vice Mayor Chavez and Council Member Cortese recognized and commended the Community Arts and History Support, Northeast Region APPN, and the Milpitas Vietnamese Lions Club for their Principle of Life Essay Celebration and recognition of the Principle of Life Essay Winners.

- 1.10 Presentation of a proclamation declaring the month of May as "Motorcycle Safety Awareness Month". (Chavez)**  
**(Rules Committee referral 4/26/06)**

Action: Vice Mayor Chavez recognized the month of May as "Motorcycle Safety Awareness Month".

- 1.8 Presentation of a commendation to Tierra Viva, a component of the Silicon Valley Toxics Coalition, for their efforts to promote and maintain environmental health and justice for all people in the Silicon Valley and beyond. (Chavez/Yeager)  
(Rules Committee referral 4/26/06)**

Action: Vice Mayor Chavez and Council Member Yeager recognized and commended Tierra Viva for their efforts to promote and maintain environmental health and justice for all people in the Silicon Valley.

- 1.11 Presentation of commendations to the winners of the Homewords student essay contest, an annual competition sponsored by the Santa Clara County Association of REALTORS and the San José Mercury News. (Yeager/Cortese/LeZotte/Nguyen)  
(Rules Committee referral 4/26/06)**

Action: Vice Mayor Chavez, and Council Members Yeager, Cortese, LeZotte and Nguyen recognized the winners of the Homewords student essay contest, an annual competition sponsored by the Santa Clara County Association of REALTORS and the San José Mercury News.

- 1.2 Presentation of a commendation to the Alum Rock Village Business Association for their exemplary dedication and valuable contributions to the San José community.  
(Campos/Mayor)  
(Rules Committee referral 4/19/06)**

Action: Vice Mayor Chavez and Council Member Campos recognized and commended the Alum Rock Village Business Association for their outstanding dedication and important contribution to the City of San José.

## **PUBLIC HEARINGS**

- 11.2 The items being considered are located on the east side of San Felipe Road, approximately 700 feet northerly of Silver Creek Road.**
- (a) Uphold the Mitigated Negative Declaration adopted for a Planned Development Rezoning from A Agriculture Zoning District to A(PD) Planned Development Zoning District to allow up to 22 single family detached residences on a 17.98 acre site.**
  - (b) Consideration of an ordinance rezoning the real property from A Agriculture Zoning District to A(PD) Planned Development Zoning District to allow up to 22 single family detached residences on a 17.98 acre site. (Pan Clair General Partnership, Owner; Dal Properties LLC, Developer) CEQA: Mitigated Negative Declaration.**

**PDC05-035 - District 8**

**(Continued from 3/21/06 – Item 11.5, 4/4/06 – Item 11.4 and 4/18/06 – Item 11.2)**

Action: Dropped.

- 11.3** Consideration of an ordinance rezoning the real property located at the southeast corner of Southwest Expressway and Fruitdale Avenue (John T. Vidovich, et al., Owner) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to increase the number of attached residential units from 500 to 502, to eliminate 250,000 square feet of commercial (office and retail) to reduce the maximum amount of retail from 30,000 square feet to 29,225 square feet and to modify the development standards for a 12.7 acre site. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (7-0-0). CEQA: Resolution No. 69886 and Addendum thereto.  
**PDC05-095** - District 6  
(Continued from 4/4/06 – Item 11.7 and 4/18/06 – Item 11.4)

Action: Continued to May 16, 2006.

- 11.4** Consideration of an ordinance rezoning the real property located on the west side of South 34<sup>th</sup> Street, across from Los Suenos Avenue (321 S. 34<sup>th</sup> St.) (Innovative Housing Solutions, LLC, Owner) from A(PD) Residential Zoning District to the A(PD) Residential Zoning District to allow 11 single-family detached residential units on a 1.38 gross acre site. SNI: Gateway East. CEQA: Mitigated Negative Declaration (File No. PDC04-033) and Addendum thereto (File No. PDC05-098). Director of Planning, Building and Code Enforcement and the Planning Commission recommend approval with the following conditions: (1) the private drive should be commonly-owned parcel maintained by a Homeowner's Association, and (2) the interior side setback of the proposed lots should be increased to five feet on one side of the units and Planning Commission recommended approval (7-0-0).  
**PDC05-098** - District 5  
(Continued from 4/4/06 – Item 11.8 and 4/18/06 – Item 11.6))

Action: Dropped.

- 11.5** Consideration of an ordinance rezoning the real property located at the northwest corner of Lucretia Avenue and Phelan Avenue (1785 Lucretia Avenue) (Phi Truong & Hung Trieu, Owners; Myha Trieu, Lucretia Development LLC, Developer) from R-1-8 Residential District to A(PD) Planned Development Zoning District to allow up to 23 single family detached residences on a 1.8 gross acre site. SNI: Tully/Senter. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (6-0-0).  
**PDC05-063** – District 7  
(Continued from 4/18/06 – Item 11.10)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-063, dated April 16, 2006, recommending approval on the subject property. (2) Memorandum from Acting Director of Planning, Building and Code Enforcement Joe Horwedel dated April 27, 2006, transmitting the Planning Commission recommendation of the subject property. (3) Letter from the public dated May 2, 2006.



## 11.5 (Cont'd.)

Public Comment: Vice Mayor Chavez opened the public hearing. Speaking in opposition to the issue were Mary Follenweider and Hien Nguyen. Daniel McCall spoke off topic. Gerry De Young, representative for the applicant responded to brief questions. Vice Mayor Chavez closed the public hearing.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Chirco, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 27713](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northwest Corner of Lucretia Avenue and Phelan Avenue (1785 Lucretia Avenue) to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1. Absent: Gonzales.)

## 11.6 **Consideration of an ordinance rezoning the real property located on the west side of Bundy Avenue, approximately 65 feet northerly of Adra Avenue (433 Bundy Avenue) (Lorran Engineering Services, Corporation, Owner) from R-M Multiple Residence Zoning District to A(PD) Planned Development Zoning District to allow up to four single-family attached residences on a 0.27 gross acres site. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval. (4-0-2-0). CEQA: Exempt. PDC05-115 - District 1**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-115, dated April 3, 2006, recommending approval on the subject property. (2) Memorandum from Acting Director of Planning, Building and Code Enforcement Joe Horwedel dated April 12, 2006, transmitting the Planning Commission recommendation of the subject property. (3) Proof of Publications of Notices of Public Hearings, executed on March 31, 2006, and April 9, 2006, submitted by the City Clerk.

Public Comment: Vice Mayor Chavez opened the public hearing. There was no testimony from the floor. Vice Mayor Chavez closed the public hearing.

Action: Upon motion by Council Member LeZotte, seconded by Council Member Reed, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 27714](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the West Side of Bundy Avenue, Approximately 65 Feet Northerly of Adra Avenue (433 Bundy Avenue), to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1. Absent: Gonzales.)

- 11.7 Administrative Hearing and Consideration of an appeal of the Planning Commission's decision to deny a Conditional Use Permit together with a determination of public convenience and necessity located at 5175 Moorpark Avenue, Unit C (on the north side of Moorpark Avenue approximately 350 feet west of Gullo Avenue) (Judson and May Chu, Owner) for the off-sale of beer and wine for an existing retail store on a 0.47 gross acre site, in the CP Pedestrian Commercial Zoning District. Director of Planning, Building and Code Enforcement and Planning Commission recommended denial. (6-0-0-1). CEQA: Exempt. CP06-001 & ABC06-001 - District 1**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP06-001 and ABC06-001, dated March 15, 2006, recommending approval on the subject property. (2) Memorandum from Acting Director of Planning, Building and Code Enforcement Joe Horwedel dated May 2, 2006, transmitting the Planning Commission recommendation of the subject property.

Council Member LeZotte disclosed that her Chief of Staff, Jim Cogan, had met with the applicant prior to the hearing.

Public Comment: Vice Mayor Chavez opened the public hearing. There was no testimony from the floor. Vice Mayor Chavez closed the public hearing.

City Attorney Richard Doyle advised that the application meets the public necessity requirement. Council Member LeZotte read into the record the findings.

Action: Upon motion by Council Member LeZotte, seconded by Council Member Reed, the recommendation of the Planning Commission and the Planning Director was not approved, and [Resolution No. 73153](#), entitled: "An Ordinance of the City of San José Approving a Conditional Use Permit and a Request for a Determination of Public Convenience or Necessity to Use Certain Real Property Described Herein for the Purpose of Off-Sale of Alcohol at an Existing Retail Market", was passed for publication. (9-1-1. Noes: Chavez. Absent: Gonzales.)

- 11.8 Consideration of an ordinance rezoning the real property located on the northeast corner of Highway 237 and Zanker Road (Los Esteros Critical Energy Facility) (800 Thomas Foon Chew Way) (Los Esteros Critical Energy Facility, LLC, Owner), from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow an increase in Generating Capacity and an 18,600 square foot addition to an existing energy facility on a 34 gross acre site. PDC05-001 - District 4**

Action: Dropped.

- 11.9 Consideration of an ordinance rezoning the real property located on the south side of Rock Avenue, approximately 800 feet westerly of Old Oakland Road (Taylor Woodrow Homes, Applicant; Also J. Scoffone, Trustee & et al, Owner) from HI Heavy Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 34 single family detached residences on a 4.08 gross acre site. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (6-0-0).  
PDC05-105 - District 4**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-105, dated April 19, 2006, recommending approval on the subject property. (2) Memorandum from Acting Director of Planning, Building and Code Enforcement Joe Horwedel dated April 27, 2006, transmitting the Planning Commission recommendation of the subject property. (3) Proof of Publications of Notices of Public Hearings, executed on March 31, 2006, and April 14, 2006, submitted by the City Clerk.

Acting Director of Planning, Building and Code Enforcement Joe Horwedel responded to Council questions and comments.

Public Comment: Vice Mayor Chavez opened the public hearing. Erik Shoennauer, representing the applicant Taylor Woodrow Homes spoke in favor. Jon McMahon, attorney for Super Micro Computer Inc. (adjacent property owner) requested certain mitigation measures, including placement of homes away from the development, restricting access and designating parking zones. Vice Mayor Chavez closed the public hearing.

Action: Upon motion by Council Member Reed, seconded by Council Member Chirco, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 27715](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the South Side of Rock Avenue, Approximately 800 Feet Westerly of Oakland Avenue to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1. Absent: Gonzales.)

- 11.10 Consideration of an ordinance rezoning the real property located on the north side of West San Carlos Street, 650 feet westerly of Meridian Avenue (1465 W. San Carlos Street) (Muller Investment Company, Owner; Shea Homes, Developer) from A(PD) Planned Development, R-2 Two Family Residence, and CP Commercial Pedestrian Zoning Districts to (A(PD) Planned Development Zoning District to allow up to 11 live-work units and 84 single family attached residences on a 5.02 gross acre site.  
PDC05-080 - District 6**

Documents Filed: Proof of publication of Public Hearing Notice, executed March 31, 2006, submitted by the City Clerk.

Action: Continued to June 20, 2006.

- 11.11 Consideration of an ordinance rezoning the real property located on the west side of San Felipe Road, approximately 300 feet south of Yerba Buena Road (Dale Nakashima, George Nieman and Clare Telford, Owners), from A-Agriculture and A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow 38 single family detached residences on a 15.3 gross acre site. Director of Planning, Building and Code Enforcement recommended approval. Planning Commission recommended approval (4-1-1-0) with conditions: (1) Reduce units from 38 to 35 and, (2) provide a minimum 50 foot setback from any road edge to riparian corridor.**

**PDC04-110 - District 8**

Documents Filed: (1) Memorandum from Council Member Cortese, dated May 2, 2005, recommending approval of the staff report with conditions. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC04-110, dated April 5, 2006, recommending approval on the subject property. (3) Memorandum from Acting Director of Planning, Building and Code Enforcement Joe Horwedel dated April 13, 2006, transmitting the Planning Commission recommendation of the subject property. (4) Proof of Publications of Notices of Public Hearings, executed on March 31, 2006, and April 9, 2006, submitted by the City Clerk.

Public Comment: Vice Mayor Chavez opened the public hearing. There was no testimony from the floor. Vice Mayor Chavez closed the public hearing.

Action: Upon motion by Council Member Cortese, seconded by Council Member Yeager, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 27716](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of San Felipe Road Approximately 300 Feet South of Yerba Buena Road to A(PD) Planned Development Zoning District", was passed for publication, with the following modifications: (1) Require a minimum 50 foot setback from the riparian edge to any proposed road frontage. (2) Work with the developer to obtain an irrevocable offer of parkland dedication for the riparian setback (east and west of the creek) in an amount such that the proposal's net density does not exceed its current land use/transportation diagram designation; (3) Work with the developer at the Planned Development Stage to ensure tree replacement occurs throughout the property in a way that preserves open space in the riparian setback area for future passive park use. (10-0-1. Absent: Gonzales.)

- 11.12 Administrative Hearing and Consideration of an appeal of the Planning Commission's decision to approve a Wireless - Conditional Use Permit (CUP) located at the east side of Highway 87 approximately 500 feet north of Branham Lane (Valley Transportation Authority, Owner; Nextel of California, Developer) to allow for a slim design monopole with 3 wireless communication panel antenna with a cylinder ray dome and placement of a new 220 square foot equipment shelter on a 0.01 gross acre site, in the R-1-8 Single Family Zoning District. CEQA: Exempt. Director of Planning Building and Code Enforcement and Planning Commission recommended approval (7-0-0).**

**CP04-076 - District 10**

## 11.12 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP04-076, dated February 27, 2006, recommending approval on the subject property. (2) Memorandum from Acting Director of Planning, Building and Code Enforcement Joe Horwedel dated April 12, 2006, transmitting the Planning Commission recommendation of the subject property. (3) Proof of Publication of Notice of Public Hearing, executed on April 21, 2006, submitted by the City Clerk.

Acting Director of Planning, Building and Code Enforcement Joe Horwedel responded to Council questions and comments.

There were no Council disclosures.

Public Comment: Vice Mayor Chavez opened the public hearing. Speaking in opposition to the rezoning were William Garbett, the Appellant, Susan Johnson and Gary Johnson. Vice Mayor Chavez closed the public hearing.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos, the recommendation of the Planning Commission was denied, and [Resolution No. 73154](#), entitled: "A Resolution of the Council of the City of San José Granting, Subject to Conditions, A Conditional Use Permit to Use Certain Real Property Described Herein for the Purpose of a New Slim Design Monopole with 3 Wireless Communication Panel Antennas with a Cylinder Ray Dome and Placement of a New 220 Square Foot Equipment Shelter", was adopted. (10-0-1. Absent: Gonzales.)

## 11.13 Consideration of an ordinance of the City of San José amending Chapter 20.120 of Title 20 of the San José Municipal Code, the Zoning Code, to allow Director Initiated Conforming rezonings to be heard directly by the City Council without a Planning Commission Hearing. Director of Planning Building and Code Enforcement and Planning Commission recommended approval (5-0-1-0). CEQA: Exempt, PP06-041. Citywide

Documents Filed: (1) Memorandum from Acting Director of Planning, Building and Code Enforcement Joe Horwedel dated April 13, 2006, transmitting the Planning Commission recommendation of the subject property. (2) Proof of Publications of Notices of Public Hearings, executed on March 31, 2006, and April 9, 2006, submitted by the City Clerk.

Public Comment: Vice Mayor Chavez opened the public hearing. There was no testimony from the floor. Vice Mayor Chavez closed the public hearing.

### **11.13 (Cont'd.)**

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 27717](#), entitled: “An Ordinance of the City of San José Amending Section 20.120.100 of Chapter 20.120 of Title 20 of the San José Municipal Code to Allow the Director of Planning, Building and Code Enforcement to Make a Determination as to Whether to Take Director-Initiated Conforming Rezonings Directly to the City Council Without Planning Commission Recommendation”, was passed for publication. (10-0-1. Absent: Gonzales.)

### **OPEN FORUM**

- (1) Bill Chew complained that 5 candidates were excluded from the Mayoral forum held Monday night in the Council Chambers.
- (2) Vendome Neighborhood Traffic Committee Members Tina Morrill, Nancy DeMattei, Caroline Bressler and Wade Hall requested that the City restore the median islands on the North San Pedro Street to the originally planned approved size and shape. Vice Mayor Chavez referred the issue to the City Manager. Attachment: From the Public, Four Hundred Twenty (420) signatures, dated May 1, 2006, requesting restoration of the median islands.
- (3) Mark Trout voiced his own religious opinions.
- (4) Robert Apgar voiced his personal view points.

### **ADJOURNMENT**

The Council of the City of San José adjourned at 8:46 p.m.

### **ATTEST:**

**LEE PRICE, CMC, CITY CLERK**

smd/5-2-06MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at [www.sanjoseca.gov/clerk/MeetingArchive.asp](http://www.sanjoseca.gov/clerk/MeetingArchive.asp)

## **8. JOINT REDEVELOPMENT AGENCY ITEM**

---

**The Joint Redevelopment Agency Board convened at 3:54 p.m. to consider Items 8.1 and 8.2 in a Joint Session.**

- 8.1**
- (a) Adoption of a resolution by the City Council making certain findings required under California Health and Safety Code Section 33445 related to Redevelopment Agency funding of public improvements; and,**
  - (b) Adoption of a resolution by the City Council acknowledging the role of the Mexican Cultural Heritage Plaza facility in preserving the history and culture of California, and stating its intent to continue this use for the next 20 years; and,**
  - (c) Approval by the City Council and Redevelopment Agency Board of an agreement with the Mexican Heritage Corporation, in the amount of \$550,000, to provide Redevelopment Agency assistance with HVAC, security, and other miscellaneous capital upgrades for the Mexican Cultural Heritage Gardens facility.**
  - (d) Adoption of a resolution by the Redevelopment Agency Board approving a proposed budget adjustment to Adopted FY 2005-06 Capital Budget by adding \$550,000 to Mexican Heritage Corp. Grant project line in the Alum Rock Neighborhood Business Investment Program Redevelopment Area, and amending the FY 2005-2006 Agency appropriations resolution.**

**CEQA: [ALUM ROCK]**

Documents Filed: Memorandum from Redevelopment Agency Director Harry S. Mavrogenes and City Manager Les White, dated May 2, 2006, recommending adoption of resolutions and approval of agreement.

Public Comment: Eddie Garcia, Mexican Heritage Plaza, and George Fokos spoke in support of the staff recommendation. William Garbett spoke in opposition.

Action: Upon motion by Council Member Campos, seconded by Council Member Williams and carried unanimously, [Resolution No. 73155](#), entitled: “A Resolution of the Council of the City of San José Making Certain Findings Required Under California Health and Safety Code Section 33445 Related to Redevelopment Funding of Public Improvements to the Mexican Cultural Heritage Gardens”; [Resolution No. 73156](#), entitled: “A Resolution of the Council of the City of San José Acknowledging the Role of the Mexican Cultural Heritage Gardens Facilities in Preserving the History and Culture of California and Its Intent to Continue this Use for at Least the Next Twenty Years”, and [Redevelopment Agency Resolution No. 5678](#) were adopted; and the agreement was approved. (10-0-1. Absent: Gonzales.)



- 8.2 (a) **Adoption of a resolution by the City Council accepting the costs and findings of the Summary 33433 Report and the Estimated Reuse Valuation pursuant to the California Health and Safety Code Section 33433 for the lease to Mesa SoFA Partners, LLC of approximately 7,030 square feet of Redevelopment Agency-owned ground floor retail space located at 170 South Market Street in the Fairmont Annex, and making certain findings; and,**
- (b) **Approval by the City Council and Redevelopment Agency Board of a lease with Mesa SoFA Partners, for the property located at 170 South Market Street in the ground floor of the Fairmont Annex for approximately 7,030 square feet of retail space for a term of 32 months, with two six month options to extend Fairmont Annex.**

**CEQA: Exempt, File No. PP06-069 [SAN ANTONIO PLAZA]**

Documents Filed: Memorandum from Redevelopment Agency Director Harry S. Mavrogenes, dated May 2, 2006, recommending adoption of a resolution and approve a lease.

Public Comment: William Garbett spoke in opposition to the Staff recommendation.

Action: Upon motion by Council Member Williams, seconded by Council Member Campos, and carried unanimously, [Resolution No. 73157](#), entitled: “A Resolution of the Council of the City of San José Accepting the Costs and Findings of the Summary 33422 Report and the Estimated Reuse Valuation Pursuant to the California Health and Safety Code Section 33433 for the Lease to Mesa SoFA Partners, LLC of Approximately 7,030 Square Feet of Redevelopment Agency Owned Ground Floor Retail Lease Space Located at 170 South Market Street in the Fairmont Annex and Making Certain Findings” was adopted and the lease was approved. (10-0-1. Absent: Gonzales.)

The Council of the City of San José, and Redevelopment Agency Board adjourned at 4:04 p.m.